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**BEFORE THE  
BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

**CAROL ANN DUNN  
160 Shady Lane  
Boulder Creek, CA 95006**

**Pharmacy Technician License No. TCH 34054**

Respondent.

Case No. 3964

**DEFAULT DECISION AND ORDER**

[Gov. Code, §11520]

**FINDINGS OF FACT**

1. On or about July 14, 2011, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 3964 against Carol Ann Dunn (Respondent) before the Board of Pharmacy. (A copy of the Accusation is attached as Exhibit A.)

2. On or about July 28, 2000, the Board of Pharmacy (Board) issued Pharmacy Technician License No. TCH 34054 to Respondent. The License was in at all times relevant to the charges in Accusation No. 3964 and will expire on November 30, 2011, unless renewed.

3. On or about July 20, 2011, Respondent was served by Certified and First Class Mail with copies of: Accusation No. 3879; a Statement to Respondent, a Notice of Defense (2 copies); a Request for Discovery; and Discovery Statutes (Gov. Code, §§ 11507.5, 11507.6, 11507.7) at Respondent's address of record, which was and is: 160 Shady Lane, Boulder Creek, CA 95006.

4. Pursuant to Business and Professions Code section 136 and/or 4100, and/or California Code of Regulations, title 16, section 1704, Respondent's address of record, and any changes thereto, are required to be reported and maintained with the Board of Pharmacy (Board).

5. Service of the Accusation was effective as a matter of law under Government Code section 11505, subdivision (c) and/or Business & Professions Code section 124.

6. Government Code section 11506 states, in pertinent part:

(c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing.

7. Respondent failed to file a Notice of Defense within 15 days after service upon her of the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 3964.

8. California Government Code section 11520 states, in pertinent part:

(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent.

9. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on the relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as taking official notice of all the investigatory reports, exhibits and statements contained therein on file at the Board's offices regarding the allegations contained in Accusation No. 3964, finds that the charges and allegations in Accusation No. 3964, are separately and severally, found to be true and correct by clear and convincing evidence.

10. Taking official notice of its own internal records, pursuant to Business and Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation and Enforcement is \$1,085.00 as of September 16, 2011.

## DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Carol Ann Dunn has subjected her Pharmacy Technician License No. TCH 34054 to discipline.

2. The agency has jurisdiction to adjudicate this case by default.

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1       3.     The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician  
2 License based upon the following violations alleged in the Accusation which are supported by the  
3 evidence contained in the Default Decision Evidence Packet in this case.:

4       a.     In violation of Business and Professions Code section 4301(h), on or about August 2,  
5 2010, Respondent self-administered **methamphetamine**, a controlled substance.

6       b.     In violation of Business and Professions Code section(s) 4301(j), (o), and/or 4060,  
7 and/or Health and Safety Code section 11377, Respondent, as described above, possessed,  
8 conspired to possess and/or assisted in or abetted possession of **methamphetamine**, a controlled  
9 substance, without a valid prescription;

10       c.     In violation of Business and Professions Code section(s) 4301(j) and/or (o), and/or  
11 Health and Safety Code section(s) 11170 and/or 11550, Respondent, as described above, self-  
12 administered/used, conspired to self-administer/use, and/or assisted or abetted self-administration  
13 or use of **methamphetamine**, a controlled substance, without prescription;

14       d.     In violation of Business and Professions Code section 4301, Respondent, as described  
15 above, engaged in unprofessional conduct.

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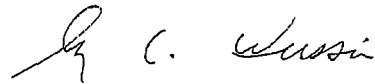
ORDER

IT IS SO ORDERED that Pharmacy Technician License No. TCH 34054, heretofore issued to Respondent Carol Ann Dunn, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on January 11, 2012.

It is so ORDERED December 12, 2011.



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STANLEY C. WEISSER, BOARD PRESIDENT  
FOR THE BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS

20525469.DOC  
DOJ Matter ID:SF2011200188

Attachment:  
Exhibit A: Accusation

# Exhibit A

Accusation

1 KAMALA D. HARRIS  
Attorney General of California  
2 FRANK H. PACOE  
Supervising Deputy Attorney General  
3 JOSHUA A. ROOM  
Deputy Attorney General  
4 State Bar No. 214663  
455 Golden Gate Avenue, Suite 11000  
5 San Francisco, CA 94102-7004  
Telephone: (415) 703-1299  
6 Facsimile: (415) 703-5480  
*Attorneys for Complainant*

7  
8 **BEFORE THE**  
**BOARD OF PHARMACY**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 3964

11 **CAROL ANN DUNN**  
12 **160 Shady Lane**  
13 **Boulder Creek, CA 95006**

**A C C U S A T I O N**

14 **Pharmacy Technician License No. TCH 34054**

15 Respondent.

16  
17 Complainant alleges:

18 PARTIES

19 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity  
20 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

21 2. On or about July 28, 2000, the Board of Pharmacy issued Pharmacy Technician  
22 License Number TCH 34054 to Carol Ann Dunn (Respondent). The Pharmacy Technician  
23 License was in full force and effect at all times relevant to the charges brought herein and will  
24 expire on November 30, 2011, unless renewed.

25 JURISDICTION

26 3. This Accusation is brought before the Board of Pharmacy (Board), Department of  
27 Consumer Affairs, under the authority of the following laws. All section references are to the  
28 Business and Professions Code (Code) unless otherwise indicated.

4. Section 4011 of the Code provides that the Board shall administer and enforce both the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances Act [Health & Safety Code, § 11000 et seq.].

5. Section 4300(a) of the Code provides that every license issued by the Board may be suspended or revoked.

6. Section 118(b) of the Code provides, in pertinent part, that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Section 4402(a) of the Code provides that any pharmacist license that is not renewed within three years following its expiration may not be renewed, restored, or reinstated and shall be canceled by operation of law at the end of the three-year period. Section 4402(e) of the Code provides that any other license issued by the Board may be canceled by the Board if not renewed within 60 days after its expiration, and any license canceled in this fashion may not be reissued but will instead require a new application to seek reissuance.

## STATUTORY PROVISIONS

7. Section 4301 of the Code provides, in pertinent part, that the Board shall take action against any holder of a license who is guilty of “unprofessional conduct,” defined to include, but not be limited to, any of the following:

(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or alcoholic beverage to the extent or in a manner as to be dangerous or injurious to oneself, to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.

(j) The violation of any of the statutes of this state, of any other state, or of the United States regulating controlled substances and dangerous drugs.

(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency.

1       8.     Section 4060 of the Code provides, in pertinent part, that no person shall possess any  
2 controlled substance, except that furnished upon a valid prescription/drug order.

3       9.     Health and Safety Code section 11170 provides that no person shall prescribe,  
4 administer, or furnish a controlled substance for himself or herself.

5       11.    Health and Safety Code section 11377, in pertinent part, makes it unlawful to possess  
6 any controlled substance in Schedule II, subdivision (d), without a prescription.

7       12.    Health and Safety Code section 11550, in pertinent part, makes it unlawful for any  
8 person to use or be under the influence of any controlled substance in Schedule II (Health and  
9 Safety Code section 11055), subdivision (d)(1) or (d)(2), or any narcotic drug in Schedules III-V,  
10 except when administered by or under the direction of an authorized licensee.

11       13.    Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
12 administrative law judge to direct a licensee found to have committed a violation of the licensing  
13 act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

14                               CONTROLLED SUBSTANCES / DANGEROUS DRUGS

15       14.    Section 4021 of the Code states:

16       “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section  
17 11053) of Division 10 of the Health and Safety Code.”

18       15.    Section 4022 of the Code states, in pertinent part:

19       “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self use,  
20 except veterinary drugs that are labeled as such, and includes the following:

21       “(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing without  
22 prescription,’ ‘Rx only,’ or words of similar import.

23       ...

24       “(c) Any other drug or device that by federal or state law can be lawfully dispensed only on  
25 prescription or furnished pursuant to Section 4006.

26       16.    **Methamphetamine** is a Schedule II controlled substance as designated by Health and  
27 Safety Code section 11055(d)(2) and a dangerous drug as designated by Business and Professions  
28 Code section 4022. It is a stimulant drug.



1 FACTUAL BACKGROUND

2 17. On or about August 2, 2010, Respondent was contacted in her residence by officers  
3 from the Santa Cruz County Sheriff's Office who had received a tip that Respondent was selling  
4 **methamphetamine**. Respondent exhibited signs of being under the influence of a controlled  
5 substance. After initially denying it, Respondent admitted to having used **methamphetamine**  
6 earlier in the day. Her urine also tested positive for **methamphetamine**. A search of her purse  
7 discovered a bundle of **methamphetamine** weighing approximately 0.5 grams.

8 FIRST CAUSE FOR DISCIPLINE

9 (Self-Administration of Controlled Substance)

10 18. Respondent is subject to discipline under section 4301(h) of the Code, in that  
11 Respondent, as described in paragraph 17 above, self-administered **methamphetamine**, a  
12 controlled substance, on or about August 2, 2010.

13 SECOND CAUSE FOR DISCIPLINE

14 (Possession of Controlled Substance)

15 19. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section  
16 4060 of the Code, and/or Health and Safety Code section 11377 in that Respondent, as described  
17 in paragraph 17 above, possessed, conspired to possess, and/or assisted in or abetted possession of  
18 **methamphetamine**, a controlled substance, without a prescription.

19 THIRD CAUSE FOR DISCIPLINE

20 (Self-Administration/Use of Controlled Substance)

21 21. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,  
22 and/or Health and Safety Code section(s) 11170 and/or 11550, in that Respondent, as described in  
23 paragraph 17 above, self-administered/used, conspired to self-administer/use, and/or assisted  
24 in/abetted self-administration/use of a controlled substance, without prescription.

25 FOURTH CAUSE FOR DISCIPLINE

26 (Unprofessional Conduct)

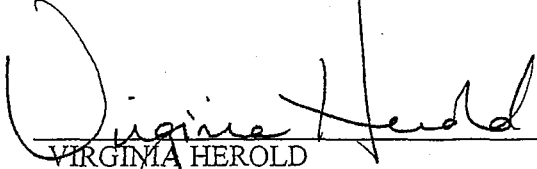
27 22. Respondent is subject to discipline under section 4301 of the Code in that  
28 Respondent, as described in paragraphs 17-21 above, engaged in unprofessional conduct.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Pharmacy issue a decision:

1. Revoking or suspending Pharmacy Technician License Number TCH 34054, issued to Carol Ann Dunn (Respondent);
2. Ordering Respondent to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as is deemed necessary and proper.

DATED: 7/14/11

  
VIRGINIA HEROLD  
Executive Officer  
Board of Pharmacy  
Department of Consumer Affairs  
State of California  
*Complainant*

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